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Report of the Special Rapporteur on extreme poverty and human rights on his mission to China

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, on his mission to China from 15 to 23 August 2016. The purpose of the visit was to evaluate and to report to the Human Rights Council on the extent to which the policies and programmes of China relating to extreme poverty are consistent with the country's human rights obligations and to offer constructive recommendations to the Government and other stakeholders.

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Report of the Special Rapporteur on extreme poverty and human rights on his mission to China*

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* Circulated in the language of submission and Chinese.

I. Introduction

1. Pursuant to Human Rights Council resolutions 8/11 and 26/3, the Special Rapporteur on extreme poverty and human rights visited China from 15 to 23 August 2016. The purpose of the visit was to evaluate and to report to the Human Rights Council on the extent to which Chinese policies and programmes relating to extreme poverty are consistent with the country's human rights obligations and to offer constructive recommendations to the Government and other stakeholders.

2. The Special Rapporteur is grateful to the Government for inviting him to China and for the opportunity to meet with officials from the Ministry of Foreign Affairs, the State Council Leading Group Office of Poverty Alleviation and Development, the Ministry of Education, the National Health and Family Planning Commission, the Ministry of Justice, the Ministry of Public Security, the Ministry of Land and Resources, the National Committee on Ageing, the National Bureau of Statistics, the Ministry of Civil Affairs, the State Ethnic Affairs Commission, the Social Law Commission of the National People's Congress, and a judge of the Supreme People's Court. The Special Rapporteur also met with representatives of international organizations, members of the diplomatic community, scholars at the Chinese Academy of Social Sciences, independent academics, domestic and foreign civil society organizations, human rights lawyers and human rights defenders.

3. During a visit to Yunnan Province, the Special Rapporteur met with officials from various provincial government departments, including the Poverty Alleviation and Development Office, the Ethnic and Religious Affairs Commission, the Department of Agriculture and the Women's Federation. He also met with experts from the Yunnan Academy of Social Sciences and undertook a government-organized visit to a service centre for disabled persons in Wuhua District, Kunming, and to poverty alleviation projects in Zixi Yi Village and in the Yunnan Red Pear Industrial Base in Fengtun Town, Chuxiong Yi Autonomous Prefecture.

4. The Special Rapporteur greatly appreciates the assistance given to him by various international organizations and non-governmental organizations (NGOs) and by experts who provided in-depth briefings before and during his mission to China.

II. Government cooperation

5. China has actively participated in the international human rights system for more than three decades, although it has not issued a standing invitation for country visits by special procedure mandate holders. Between 1997 and 2015, six mandate holders visited: on arbitrary detention (1997 and 2004); torture (2005); the right to education (2003); the right to food (2010); discrimination against women in law and in practice (2013); and foreign debt (2015). The Special Rapporteur notes that under the new National Human Rights Action Plan, more visits are envisaged for the future.[1] The Special Rapporteur also urges consideration of the issuance of a standing invitation, and a preparedness to engage with mandate holders dealing with the full range of human rights.

6. The Special Rapporteur commends the Government for inviting him to China, but would also wish to draw attention to some difficulties that arose in the course of the mission:

(a) The Government's view that it was fully responsible for determining every detail of the agenda of the visit reflects a misunderstanding of the role of special rapporteurs as independent experts;

(b) The Government advised the Special Rapporteur not to make direct contact with civil society organizations to arrange meetings, and requested full details of any

[1] National Human Rights Action Plan of China (2016-2020), 29 September 2016. Available from http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm.

private meetings held. However, in conformity with established procedures, he notified the Government only when requested to do so by the civil society actor concerned;

(c) The Special Rapporteur was regularly followed by security officers posing as private citizens, thus making it virtually impossible to meet privately with civil society organizations and individuals;

(d) The Government warned the Special Rapporteur not to meet with individuals it considered "sensitive", and those individuals were warned not to meet with the Special Rapporteur; in one case, a person with whom the Special Rapporteur was supposed to meet was taken into custody for a couple of hours, thus preventing the meeting from happening;

(e) As a result of these combined measures, the Special Rapporteur was unable to meet with the great majority of civil society actors with any degree of freedom or confidentiality;

(f) The Yunnan visit was organized by the Government in a way that ignored the Special Rapporteur's stated preferences and ensured that most of the meetings and other activities were formalities;

(g) Both during and after the mission, certain individuals with whom the Special Rapporteur met or was supposed to meet were subjected to what appear to be acts of intimidation and reprisal. These matters were taken up by the Special Rapporteur, along with other relevant special procedure mandate holders, in a communication to the Government on 26 October 2016.[2] This group subsequently issued a press release, on 6 December 2016,[3] after the disappearance on 21 November 2016 of human rights lawyer Jiang Tianyong, whom the Special Rapporteur had met in Beijing.

7. The ability of the special procedure mandate holders to carry out their tasks of promoting and protecting human rights depends on their being able to engage in free and unsupervised communication with civil society and private individuals, before, during and after country visits. This applies as much to visits to China as to any other country.

8. A mandate holder's programme is organized in consultation with the Government, but this does not mean that the Government is entitled to determine and control every aspect of the agenda or to insist that, apart from government officials, meetings can only be held with "approved" non-governmental actors. A mission conducted on that basis would not enable a special rapporteur to discharge his or her obligation to establish the facts impartially and independently. The resulting report would rightly be criticized for providing only an incomplete and distorted picture.

9. The basis on which United Nations human rights fact-finding missions are undertaken by special procedure mandate holders reflects long-standing practice spanning many decades — including initial sets of standards adopted in the 1950s and 1960s, the terms of reference adopted for the 1978 mission to Chile,[4] and follow-up work by the Commission on Human Rights and the Economic and Social Council.[5]

10. The procedural arrangements that were agreed in the late 1970s have been followed ever since, and were reflected in the 1998 terms of reference for fact-finding missions by special rapporteurs/representatives of the Commission on Human Rights[6] and in the 1999 special procedures' manual of operations. In discussions following the mission, the Government of China has suggested that the terms of reference, as updated in 2016, are not applicable because they have not been formally endorsed by the Human Rights Council. But this argument overlooks the fact that the Council adopted the Code of Conduct for Special Procedures Mandate Holders in 2007, which explicitly took note of the 1999 manual, which in turn was officially adopted in August 2000.

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[2] See https://spcommreports.ohchr.org/TmSearch/SearchSessionNumber?number=34.

[3] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20987.

[4] See A/33/331, annex VII.

[5] See A/33/331, annexes VI and VII, and Economic and Social Council resolution 1870 (LVI).

[6] See E/CN.4/1998/45.

11. Both the 2007 code of conduct and 2008 revised manual of operations, which the Council noted are to be read "in consonance" with one another, emphasize the importance of experts acting "in an independent capacity", having the "freedom to assess" situations, establishing "facts, based on objective, reliable information", preserving "the confidentiality of sources", establishing a dialogue not only with government authorities but also "with all other stakeholders" and having their security protected "without prejudice to the privacy and confidentiality that mandate holders require to fulfil their mandate".[7] The position expressed by the Government is clearly not compatible with these long-established principles.

III. Achievements

12. Over the past three decades, and with particular speed in recent years, China has lifted hundreds of millions of people out of poverty. This is a staggering achievement and is a credit to those responsible. But, although precise figures are often given, it is surprisingly difficult to know exactly what the numbers are. This is partly because different time periods are used, different criteria are applied and different sources are used. Figures from official institutions and from the World Bank range between 500 million and 767 million. Officials now tend to use the figure of 700 million.[8]

13. Equally impressive is the fact that progress has not only been made in terms of addressing income-based poverty, but also in terms of meeting a diverse array of social goals. A few examples must suffice. In 2003, only 10 per cent of the population had health insurance. By 2013, some 95 per cent were covered, including most of the rural poor and the vulnerable urban groups. In 2009, only 240 million people were covered by pension schemes and 58 million were actually receiving pensions. By 2014, coverage was up to 842 million and recipients up to 229 million. Far-reaching social assistance programmes have been introduced, such as Wubao for the elderly, people with disabilities and juveniles, and Dibao to provide cash or in-kind support to poor households living below a locally defined poverty line. Between 2000 and 2012, the infant mortality rate fell by 60 per cent and the maternal mortality rate fell by 49 per cent. Life expectancy at birth rose from 67 to 76.3 years from 1990 to 2015.[9]

14. If there are lessons to be drawn by other countries from the achievements of China, the principal ones would seem to be that (a) a well-functioning market economy is capable of generating large financial returns, including for the State; (b) governmental intervention to improve the situation of the relatively large numbers of people whom the market inevitably bypasses is essential; and (c) genuine political will to alleviate poverty is arguably the most important ingredient of all.

15. There is no shortage of reporting on human rights in China, including by the Government and its critics. Rather than going over that well-trodden ground, the present report focuses instead on the Special Rapporteur's mandate to examine the relationship between poverty alleviation and human rights. This requires drawing a clear distinction between achieving development objectives and respecting human rights obligations. The two are mutually reinforcing, but they are not synonymous. The development attainments that China has made are unquestioned, as specifically highlighted by the Special Rapporteur in his end-of-mission statement at the conclusion of his visit to China.[10] But the task of the Special Rapporteur is also to consider whether these achievements have ensured full respect for human rights in China.

16. The greatest challenge in this respect is to understand how the leading role of the Communist Party can coexist with the recognition of individual rights and the provision of

[7] See Human Rights Council resolution 5/2, annex.

[8] State Council Information Office of the People's Republic of China, "China's progress in poverty reduction and human rights", 17 October 2016. Available from http://english.gov.cn/policies/latest_releases/2016/10/17/content_281475468533275.htm.

[9] World Health Organization, "China-WHO country cooperation strategy 2016-2020", p. 2.

[10] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20402&LangID=E.

meaningful accountability mechanisms, which are indispensable elements in a human rights framework. The challenge was well captured in the former President's report to the eighteenth Party Congress, in which he said that in order to "strengthen social development" what was needed was "a law-based social management system featuring Party committee leadership, government execution, non-governmental support and public participation".[11] Reconciling these different dimensions is not easy. In setting out below some of the concrete challenges facing China, the Special Rapporteur is constrained to be highly selective, as a result of the strict page limit imposed on the report.

IV. The challenges ahead

A. Income poverty

17. Government statistics indicate that 5.7 per cent of the rural population of China were still living in poverty at the end of 2015.[12] Rates vary significantly, from as high as 10 per cent in western China to only 1.8 per cent in eastern China. Certain groups are especially vulnerable, such as ethnic minorities, for whom the rate is 12.1 per cent, and the elderly and youth, for whom it is 7.1 per cent.

18. The President, Xi Jinping, has promised to eliminate poverty by 2020, which according to the Government means lifting 55.75 million rural people out of poverty.[13] The goal is enshrined in the thirteenth Five-Year Plan (2016-2020) and all levels of the Government and the Party have been instructed to give it the highest priority. All indications are that it will be met, even ahead of time.

19. This is an impressive and admirable goal, but several observations are in order. Firstly, the income-based benchmark used to calculate such statistics is often unclear and not always consistent. Some government officials claim that the benchmark used is higher than the World Bank minimum for measuring extreme poverty, but the figures offered alternate between 2,300 and 2,800 yuan per year. Both of these figures appear to be well below the World Bank target of $1.90 per day.

20. Secondly, comprehensive elimination is not anticipated, since for administrative purposes the goal will be considered to have been met as long as rates across the board are below a 3 per cent threshold. Thirdly, the programme is aimed at the rural poor, and does not include specific measures directed at eliminating extreme poverty in urban areas. Fourthly, experts have also questioned whether the elimination of extreme poverty is sustainable in the medium term given that the broader array of measures that is needed is currently being overshadowed by the imperative need to meet the Party's goals prior to the 100th anniversary of its founding. Finally, and most importantly for the purpose of the present report, is whether the current approach is being carried out in a manner that conforms to human rights obligations, and in particular whether it provides for meaningful accountability mechanisms.

B. Multidimensional poverty

21. The Special Rapporteur has consistently emphasized that poverty is a multidimensional phenomenon that requires consideration not just of income but also of access to basic services and of problems of exclusion. According to the 2015 *Human*

[11] See http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c_131981259_8.htm.
[12] State Council Information Office, "China's progress in poverty reduction and human rights".
[13] See http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf.

Development Report, 72 million people in China still live in multidimensional poverty, with a rate of 8.1 per cent in rural areas.[14]

22. There is a risk that the "tyranny of indicators" will compel officials to focus too narrowly on income-based approaches to poverty alleviation, thereby paying insufficient attention to the multidimensional aspects of poverty, despite the fact that some government officials insisted that they were not only focused on income in their work on poverty alleviation. If this is the case, it would be exceptional, since income is still the dominant paradigm used for defining and measuring poverty. For many officials, poverty continues to be seen as an essentially economic issue that can be solved through economic growth. Another obstacle to treating poverty as a multidimensional phenomenon is the lack of coordination between the key government agencies. The State Council Leading Group Office of Poverty Alleviation and Development coordinates anti-poverty policies at the level of the central Government, but lacks the hierarchical status to be effective in achieving this aim. The rank of the head of the Leading Group, currently a vice-minister, should be elevated to reflect the importance of coordinating anti-poverty policies across multiple subject areas.

C. Inequality

23. The "Chinese dream", which the Government often extols, is not one in which there is radical inequality. Nevertheless, the great progress that China has made in poverty alleviation has been accompanied by the emergence of very high levels of inequality. This has been acknowledged by the Government in the National Human Rights Action Plan for 2016-2020, which notes the "huge gap between urban and rural development".[15]

24. Between 1981 and 2007, the Gini coefficient in distribution of net household income in China grew from 0.28 to 0.49.[16] Independent data are lacking for income distribution trends since 2007, but official sources report an income Gini coefficient of 0.46 in 2015.[17] This would still put China in the top 30 most unequal countries. Independent research suggests a Gini coefficient of 0.61 in 2010, and 0.6 in 2014, which would make it one of the most unequal countries on earth.[18] The richest 1 per cent of households own one third of the country's wealth, while the poorest 25 per cent own just 1 per cent. The State Council acknowledged in 2013 that income inequality was a problem and identified 35 measures to be taken to address it.[19] But Government policies appear to have made very little impact.

25. Urban/rural inequality is especially problematic. In 2007, the ratio of urban to rural family income was 4:1, but by 2014 it had declined to 2.53:1.[20] This positive trend will need to continue if rural incomes are to catch up. But government spending has consistently favoured urban elites, to the detriment of rural dwellers and migrant workers (rural to urban migrants). This is partly a result of the decentralized fiscal system in China, which leads to large disparities in public social services expenditure per capita from region to region.[21]

26. Public transfers reinforce pre-existing inequalities, by benefiting the rich more than the poor, and the urban population more than the rural population. An unpublished study

[14] United Nations Development Programme, *Human Development Report 2015: Work for Human Development* (United Nations publication, Sales No. E.15.III.B.1), pp. 61 and 62. Calculations based on data from the 2012 China Family Panel Studies.

[15] National Human Rights Action Plan of China.

[16] Martin King Whyte, "Soaring income gaps: China in comparative perspective", *Daedalus*, vol. 143, No. 2 (spring 2014).

[17] The Economist, "Up on the farm", 14 May 2016.

[18] Martin King Whyte, "Soaring income gaps", p. 41. See also The Economist, "Up on the farm".

[19] See www.gov.cn/zwgk/2013-02/05/content_2327531.htm.

[20] Shen Ke and others, "A benevolent State against an unjust society? Inequalities in public transfers in China", unpublished (2016), p. 7.

[21] The World Bank, and the Development Research Center of the State Council, the People's Republic of China, *China 2030: Building a Modern, Harmonious and Creative Society* (2013), p. 271.

shows that the public pension system "is highly regressive, with lower income groups entitled to much less pension benefits".[22]

27. Another problem results from the hukou, which is a household registration system introduced in the 1950s. Chinese citizens have (a) an urban, non-agricultural registration; (b) an urban, agricultural registration; (c) a rural, agricultural registration; or (d) no registration at all. Those with rural, agricultural registration are at a major disadvantage in many respects. The 200 million migrant workers from the countryside who constitute up to 30 per cent of the population of some large cities have been described as a "subordinate caste", who are treated unequally in access to social services such as education, health care and social security.[23]

28. While the National Human Rights Action Plan for 2016-2020 reiterated that ongoing hukou reform would remove the differences between agricultural and non-agricultural registration,[24] various interlocutors suggested a lack of political will to enforce such reforms. There continues to be powerful resistance from urban dwellers to any hukou reforms that would provide an easier path to regularization for migrant workers. Reforms would only be feasible if accompanied by additional governmental resource allocations.

D. Importance of accurate data

29. As noted earlier, no single authoritative figure captures the number of people lifted out of extreme poverty in recent years in China. In some contexts, the discrepancies among the available estimates would not matter, but the Government has set great store on precision because of the very exact targets that it has identified. It is argued in a recent analysis of official statistics that poverty rates at the national, rural and urban levels are "much higher than the official estimates".[25] Despite the immensity of the Government's achievements, the disparate figures and the challenges to the accuracy of official sources highlight the importance of accurate and transparent data. The research study notes that "the data-collection process in official surveys lacks transparency", a problem that became clear to the Special Rapporteur in the course of his visit. Beyond references to household surveys, detailed information on sources and collection procedures is sparse. Expert interlocutors pointed to examples of negative data being withheld from publication (such as data on household catastrophic health expenditure from the 2013 National Health Services Survey), and to the unavailability of disaggregated statistics, relating especially to issues such as gender. Similarly, the International Labour Organization committee of experts responsible for monitoring the compliance by China with the child labour standards contained in the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) has expressed concern over the absence of official data on these issues.

E. Poverty alleviation approach

30. China employs a top-down approach to poverty alleviation. This was illustrated by a presentation to the Special Rapporteur from the State Council Leading Group Office of Poverty Alleviation and Development, which underlined the dominant role of the Government and the Party in poverty alleviation: "We have guided party leaders in poverty-stricken counties to focus on targeted poverty alleviation, driven the attention of party secretaries at five levels to poverty alleviation and gathered the strength of the whole Party for this task … We have appointed 128,000 teams and 540,000 cadres to cover almost all poverty-alleviation villages." While this language shows strong commitment and political will on the part of the Government and the Party, it also highlights the marginal role

[22] Shen Ke and others, "A benevolent State", p. 20.

[23] Martin King Whyte, "Soaring income gaps", p. 47.

[24] National Human Rights Action Plan of China.

[25] Chunni Zhang and others, "Are poverty rates underestimated in China? New evidence from four recent surveys", *China Economic Review*, vol. 31 (2014), p. 410.

accorded to civil society and individuals living in poverty to shape anti-poverty policies and programmes. This is problematic because the participation of these stakeholders is essential for the design and implementation of effective policies that fully respect the human rights of individuals affected.

31. This top-down approach to poverty alleviation prevails in China partly because of the Communist Party's incentive structure. Officials are assessed and promoted on the basis of their ability to meet poverty alleviation targets and to implement national anti-poverty policies and programmes. They are therefore wary of complaints that slow down and complicate implementation and have every incentive to push through programmes without taking into account the views of those affected. As a result, there is a real risk that while official targets will be met, the root causes of poverty will be insufficiently addressed.

32. The former President acknowledged in 2012 the need for a "law-based social management system" that featured, among other things, "non-governmental support and public participation".[26] But despite the rhetorical commitment to consulting civil society and promoting public participation, several interlocutors indicated that the Government saw civil society organizations primarily as service providers implementing its policies and programmes. There is thus little room for civil society organizations that are critical of the Government's approach, let alone organizations that highlight the importance of respecting the human rights of those affected by poverty alleviation work.

33. The low level of involvement of citizens in shaping anti-poverty policies was confirmed by various interlocutors. Article 11 (3) of the Provisional Measures on Social Assistance (State Council Decree No. 649 of 21 February 2014) provides that the department of civil affairs at the county level should explain in writing its decision to deny an application for subsistence security. When the Special Rapporteur asked the Ministry of Civil Affairs in Beijing what could be done by an applicant who disagreed with such a decision, it was explained that the applicant could either appeal to the Ministry or go to court. When asked how often there had been complaints or lawsuits, the Ministry's Director-General indicated that he was unaware of any, because this "was not their priority". In a meeting with the State Council Leading Group Office of Poverty Alleviation and Development, complaints about anti-poverty programmes were referred to as "a headache".

F. Equality-related challenges

34. The most significant equality-related challenge for China in its anti-poverty work relates to the situation of persons with disabilities. According to the State Council Leading Group Office of Poverty Alleviation and Development, more than 20 million of the 55.75 million rural poor have a disability. The Government persists in pursuing a "welfare approach" toward this group. In recent policy documents, such as the 2015 State Council Opinions on Accelerating the Process of Persons with Disabilities Toward a Comparatively Well-Off Life and on Establishing a Full-Scale System of Living Subsidies for Disabled Persons with Financial Difficulties and Nursing Subsidies for Persons with Serious Disabilities, the emphasis is more on welfare and subsidies than on guaranteeing the human right of persons with disabilities to education and work in order for them to participate fully and equally in Chinese society and thereby escape poverty.

35. Various international organizations and civil society organizations with whom the Special Rapporteur consulted pointed to the low level of persons with disabilities in employment. Official figures indicate that about one third to 40 per cent of all persons with disabilities are employed; that number seems unrealistically high. All public and private employers in China are required to ensure that at least 1.5 per cent of their employees are persons with disabilities, or else pay a contribution to the Disabled Persons Employment Security Fund.[27] But according to a widely cited 2012 report, the Government had only

[26] See http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c_131981259_8.htm.

[27] State Council of the People's Republic of China Decree No. 488, Regulations on the Employment of Persons with Disabilities (2007).

recruited 92 civil servants with a disability nationwide in a five-year period.[28] If the Government itself sets such a poor example, it is unsurprising that private sector employment levels are similarly low. Most employers opt to contribute to the Disabled Persons Employment Security Fund rather than hire and accommodate employees with a disability.[29] As the Committee on the Rights of Persons with Disabilities concluded in 2012, the system addresses neither the chronic unemployment nor its root causes.[30] The Government should commit to a stricter enforcement of the 1.5 per cent rule, and thus take seriously its promise to improve "the system of providing jobs for the disabled by public institutions".[31] Great results would be achieved if the Government were to enforce the 1.5 per cent rule with the same vigour as it approaches parts of its anti-corruption campaign.

36. China has ratified the Convention on the Rights of Persons with Disabilities, in which the importance of monitoring involving civil society actors is highlighted. But few independent civil society organizations engage in such monitoring. The China Disabled Persons' Federation functions as a "national umbrella organization" for disability issues, and has about 120,000 full-time employees nationwide.[32] But it hardly qualifies as a civil society organization. Its head is a vice-minister, it performs many government functions and it is the secretariat of the State Council Working Committee on Disability.

37. The second equality-related challenge concerns gender inequality. While reference is often made to Mao Zedong's famous proclamation that "women hold up half the sky", the fact is that Chinese women get paid much less than the men who hold up the other half. The 2010 Survey on the Social Status of Women, published by the All-China Women's Federation and the National Bureau of Statistics, concluded that women in rural households earn only 56 per cent of men's wages, down from 79 per cent in 1990. In urban areas women earned 67 per cent of men's wages in 2010, down from 77 per cent in 1990.[33]

38. Despite indications that women are falling behind in terms of income equality and are overrepresented among the poor population, there is little evidence that the Government was giving special attention to gender in its anti-poverty policies. In one meeting with researchers of the Chinese Academy of Social Sciences, a government think tank, it was suggested that gender inequality was "not a serious issue" in China. This impression is confirmed when reading the Government's progress report on poverty reduction and human rights, of October 2016, according to which women only made up 36.6 per cent of the recipients of subsistence allowances and relief and assistance for those in extreme poverty.[34] Unfortunately, little is known about the impact of this neglect on women living in poverty, because the Government does not publish poverty data disaggregated by gender. The policy of refusing to do so should be overturned.

39. The third equality-related challenge relates to persons who identify themselves as lesbian, gay, bisexual, transgender or intersex. An observer is hard pressed to find any reference to this group in government anti-poverty or human rights policy documents. In the recent progress report on poverty reduction and human rights there is no mention at all of lesbian, gay, bisexual, transgender or intersex persons,[35] and the same is true for the new National Human Rights Action Plan.[36] According to a 2014 report, "no government department or specific ministry sees itself responsible for lesbian, gay, bisexual and transgender issues".[37] The Government should create a government department or ministry

[28] See www.chinadaily.com.cn/opinion/2012-12/07/content_15994021.htm.
[29] See www.chinabusinessreview.com/hiring-disabled-workers-in-china-incentives-and-challenges/.
[30] See CRPD/C/CHN/CO/1, para. 41.
[31] National Human Rights Action Plan of China.
[32] See www.cdpf.org.cn/englishold/aboutus/200804/t20080409_267487.html.
[33] United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "Gender equality in China's economic transformation", October 2014, p. 6.
[34] State Council Information Office, "China's progress in poverty reduction and human rights".
[35] Ibid.
[36] National Human Rights Action Plan of China.
[37] United Nations Development Programme and the United States Agency for International Development, "Being LGBT in Asia: China country report" (2014), p. 11.

responsible for the rights of lesbian, gay, bisexual, transgender and intersex persons, which should immediately undertake a study on poverty in this group.

40. While transgender persons are only a small group within the lesbian, gay, bisexual, transgender and intersex community, the Government appears to be especially reluctant to face up to the policy challenges involved. Transgender persons are often condemned to live in poverty because it is exceedingly difficult for them to find employment due to the intense discrimination they face.[38] As a result, many — especially transgender women — end up as sex workers. Research by the Joint United Nations Programme on HIV/AIDS (UNAIDS) has shown that transgender women are on average 49 times more likely to acquire HIV than all adults of reproductive age.[39] There is, however, a lack of targeted HIV programming and services for this group.[40]

41. Chinese law allows for changing one's gender on identity documents, but this is possible only after undergoing sex reassignment surgery, which is extremely expensive and is not covered by health insurance plans. To qualify for such surgery, candidates first need to be diagnosed as mentally ill.[41] This huge and unwarranted barrier prevents many from undergoing surgery and thus from being able to change their gender on their identity documents, which further complicates their situation.

42. The fourth and final equality-related challenge relates to ethnic minorities in China. The Special Rapporteur sought to witness the situation first-hand by visiting rural areas of Yunnan Province, a poor part of China with a diverse range of ethnic minorities. But despite his persistent endeavours, the visit to Yunnan Province was organized entirely by the Government and in ways that defeated the Special Rapporteur's goals of meeting with people living in poverty, representatives of civil society groups not beholden to the Government, and scholars able to speak freely. Instead, photographic opportunities were provided at a model tourist village and a brand new model centre for persons with disabilities. The findings below are thus based on extensive research and conversations outside Yunnan Province with civil society organizations, experts, international organizations and the Government of China.

43. China counts 56 officially recognized ethnic minorities. The majority Han Chinese make up more than 90 per cent of the population, with ethnic minorities making up less than 10 per cent. The National Bureau of Statistics informed the Special Rapporteur that the poverty rate in eight western provinces with significant ethnic minority composition was over 12 per cent, compared to a national rate of 5.7 per cent. International organizations in Beijing estimated that ethnic minorities made up around one third of the total poor population in China, thus presenting a reality that was very different from the assurance in article 4 of the Constitution that all "nationalities" (the term used in the Constitution to refer to the various ethnic groups, majority or minority) are equal.

44. Of the 56 ethnic minorities in China, the international media, human rights NGOs and other States Members of the United Nations tend to focus almost exclusively on the plight of Tibetans and Uighurs. While those situations are deeply problematic, the reality is that most ethnic minorities in China are exposed to serious human rights challenges, including significantly higher poverty rates,[42] ethnic discrimination[43] and forced relocation.

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[38] Ibid, p. 9.

[39] UNAIDS, "The gap report" (2014), p. 91.

[40] Asia Catalyst, "My life is too dark to see the light: a survey of the living conditions of transgender female sex workers in Beijing and Shanghai" (2015).

[41] Ibid, p. 3; and UNDP and USAID, "Being LGBT in Asia: China country report", p. 9.

[42] See, for example, this recent article on dispossession of a Hui Muslim community: Qiangqiang Luo and Joel Andreas, "Using religion to resist rural dispossession: a case study of a Hui Muslim community in north-west China", *The China Quarterly*, vol. 226 (June 2016).

[43] The Committee on Economic, Social and Cultural Rights expressed concern about "persistent and widespread discrimination against ethnic minorities, particularly in the western provinces and regions, especially in the fields of employment, social security, housing, health and education". See E/C.12/CHN/CO/2, para. 14.

45. The Government's response focuses primarily on promoting economic development, which might or might not lead to improved human rights realization. The resulting policies are essentially top-down and "one size fits all" and little attention is paid to consultation or responding to complaints. When the Special Rapporteur met with the State Ethnic Affairs Commission, the central policymaking body of the State Council in regard to ethnic minorities, officials insisted that there had been "no resistance to its poverty alleviation projects" and "no protests". When asked about the number of complaints that the Commission received through its online complaint mechanism, the Special Rapporteur was assured that the number was "very small". But the Commission was unable to provide any specific data. The State Ethnic Affairs Commission should remedy this "head in the sand" approach and develop a comprehensive set of policies designed to ensure that human rights considerations are prominent in, rather than absent from, all aspects of its policymaking.

G. Rural land takings

46. Rapid urbanization over the past three decades has contributed to unprecedented economic growth and a dramatic reduction in income poverty. Urbanization is a central objective of the Communist Party, as demonstrated by the National New-type Urbanization Plan (2014-2020) and the thirteenth Five-Year Plan (2016-2020), which envisage relocation of 100 million rural residents to cities, so that 60 per cent of the total population will live in urban areas by 2020.[46] As a poverty alleviation measure, the Government has also reportedly resettled 9.91 million "impoverished people" to urban areas where they are expected to have better living and working conditions.[47]

47. This top-down focus on urbanization through relocation has been successful in some respects. The Government has developed infrastructure, industrial parks and commercial and residential buildings on a massive scale in a short span of time. However, millions of rural farmers have been rendered landless in the urbanization process. The urbanization drive in China has been underpinned by expropriation of rural land and its conversion into urban construction land. One estimate suggests that 53 million farmers have lost their land and farm-based livelihood over the past 20 years as a result of urbanization.[48]

48. Officials were adamant that rural citizens whose land was expropriated by the Government received a good deal, since they got millions of yuan in compensation and enjoyed better living conditions in the urban areas to which they had been resettled. Officials stressed the importance of property rights and of adequate procedural safeguards for land expropriation under Chinese law. However, it is difficult to reconcile this suggested "win-win" outcome with the fact that expropriations are a major and growing cause of social unrest in China. Across the country, residents affected have increasingly engaged in demonstrations to express their anger over low levels of compensation and the lack of transparency in the distribution of compensation and sale proceeds, which often benefit local governments and individual officials involved in expropriation. One study concluded that over 100,000 "mass incidents" (demonstrations involving more than 100 people) took place every year and that 60 per cent of such incidents were related to land disputes.[49]

49. Contrary to the claims of central Government officials, the lack of adequate protection for rural land rights is at the heart of the problem. The existing legal framework does not guarantee the right of affected rural residents to be consulted about expropriation plans or to have a say in expropriation decisions. Instead, expropriation is "announced" by

[46] See "Xinhua, China unveils landmark urbanization plan", 16 March 2014, available from http://news.xinhuanet.com/english/china/2014-03/16/c_133190495.htm, and "Report on China's economic, social development plan", 18 March 2016, available from www.china.org.cn/china/NPC_CPPCC_2016/2016-03/18/content_38064750_15.htm.

[47] State Council Information Office, "China's progress in poverty reduction and human rights".

[48] The World Bank, and the Development Research Center of the State Council, the People's Republic of China, *Urban China: Toward Efficient, Inclusive and Sustainable Urbanization* (2014), p. 267.

[49] Ibid., p. 282.

the local government after it has already been approved.[48] The land tenure system grants the State extremely wide discretion to expropriate land in the "public interest"[49] — an undefined term as far as rural land is concerned. In practice, the "public interest" can mean the expropriation of land for the development of commercial or industrial ventures. Those who oppose expropriation, and their supporters such as lawyers and community leaders, are often subjected to verbal threats, intimidation, loss of basic services, dismissal from jobs, and the use of force and violence by local authorities.

50. While those whose rural land is expropriated are entitled to compensation and resettlement subsidies under the Land Administration Law, of 1998, the amount of compensation is often insufficient to maintain an adequate standard of living. Compensation is calculated on the basis of the average agricultural output of the land over the three years preceding the expropriation and is capped at 30 times the average annual output. No account is taken of the fact that the value of the land invariably increases dramatically as soon as it is reclassified as non-agricultural land.[50] In some cases, the residents affected are not compensated at all. Women are especially disadvantaged by rural land takings, as rules and regulations at the village level often prevent them from receiving a fair share of the compensation paid. The reality is that the village administration often disregards women's land rights.[51]

51. Dispossessed of their land and with wholly inadequate compensation, the new "urbanized" residents often fall into poverty. They cannot find new employment in resettlement areas and cannot access urban social security benefits. A 2011 survey across 17 provinces found that only 13.9 per cent of the "urbanized" farmers had access to urban social security, and only 9.4 per cent were entitled to urban medical insurance.[52]

52. Rural land takings have thus fuelled both social inequality and a sense of injustice, particularly in view of sizeable profits made by local governments as a result of land expropriations and transactions. The Communist Party is aware of the problem and the threat that it poses to the country's stability. In a series of key policy documents, such as Document No. 1 of 2014 and 2015 and the thirteenth Five-Year Plan, the Government committed itself to important reforms related to collective property rights and expropriation of rural land, as well as compensation and social security for dispossessed farmers. However, the details of such reforms are yet to be made public and it is unclear whether and to what extent the due process rights of rural farmers will be recognized. Without such recognition the situation of many rural landowners will be unsustainable, leading to increasing protests and threatening the stability of China.

II. The human right to education

53. The Compulsory Education Law ensures the right of school-age children and adolescents to nine years of compulsory education. China has devised a great many policies and programmes to ensure that children and adolescents in fact complete those nine years of education and has spent enormous sums of money on realizing that worthy objective. Official data suggest that these policies have had a decidedly positive impact on the number of students completing junior high school. According to the "Statistical bulletin of China's national educational development", the share of students who have completed compulsory education was 99.3 per cent in 2008, 99.7 per cent in 2009 and 100 per cent in 2010. However other official sources, such as the June 2016 "Assessment report on the

[48] See art. 46 of the Land Administration Law of 1998.

[49] See art. 10 of the Constitution, and the Property Rights Law of 2007.

[50] See art. 47 of the Land Administration Law of 1998. See also Li Ping and others, "Urbanization and its implications to farmers' land rights", Landesa (December 2015), p. 10.

[51] Xiaobei Wang, "Rural women's land rights in China", paper presented at the expert group meeting on good practices in realizing women's rights to productive resources, with a focus on land, Geneva, Switzerland, 25-27 June 2012.

[52] Landesa, "Insecure land rights: the single greatest challenge facing China's sustainable development and continued stability". Available from www.landesa.org/china-survey-6/.

implementation of the Human Rights Action Plan (2012-2015)", report that only 93 per cent of enrolled students complete their nine-year compulsory education.[53]

54. While official figures suggest that China has been fulfilling its obligation to guarantee nine years of compulsory education, there is reason to be sceptical about the accuracy of official statistics. One reason is that they are obtained by extrapolating on a national scale on the basis of data from various lower levels of the education bureaucracy. Schools and lower-level governments have a strong incentive to underreport dropout rates, because of the negative financial and other consequences of reporting unsatisfactory figures. One recent empirical study suggests that the cumulative average dropout rates across rural junior high schools (years seven to nine of compulsory education) range somewhere between 17.6 per cent and 31 per cent.[54] This makes the promise by the Government that by 2020 "some 90 per cent of junior high school students shall enter senior high schools" seem overly optimistic, especially for rural students.[55]

55. There are indications that the central Government in Beijing is either not entirely aware of the situation in relation to rural dropouts or wants to avoid tackling the problem head-on. This may be due to the above-mentioned underreporting, but can also be explained by the decentralized responsibilities in the education system and a fear in Beijing of rural students migrating to the big cities. This last point was confirmed during a meeting with the Ministry of Education, where an emphasis was put on the enormous challenge of urbanization in China and the fear of "disorderly" migration of students. While the Ministry acknowledged the existence of dropouts in rural schools, the problem was downplayed by emphasizing that it only affected the third year of junior high school and only in western China. An important first step to tackle this problem is for the central Government to conduct an open and transparent inquiry and to publish the findings. It is crucial for sustainable poverty alleviation in China that the country protect the human right to education of rural children, who are at serious risk of becoming the future poor of China.

I. The human right to health

56. China has achieved great progress in improving access to health care. Through a series of health sector reforms starting in 2003, the Government introduced medical insurance schemes for rural and urban residents and made significant investments in health infrastructure. In 2009, the Government pledged to provide access to basic health-care services for all by 2020[56] and ensured that this commitment was followed through at local levels by requiring provincial and local officials to achieve certain targets for health insurance coverage as part of their performance evaluation criteria.[57] The number of persons covered by the health insurance system increased tenfold between 2003 and 2013, reaching 96.9 per cent of the total population,[58] thus achieving almost universal health coverage. Physical access to health services had increased to 83.3 per cent of the population by 2011.[59] The positive impact of the increased access to health care is clearly reflected in

[53] State Council Information Office, "Assessment report on the implementation of the Human Rights Action Plan (2012-2015)".

[54] Yaojiang Shi and others, "Dropping out of rural China's secondary schools: a mixed-methods analysis", *The China Quarterly*, vol. 224 (December 2015), p. 1052.

[55] National Human Rights Action Plan of China.

[56] Opinions of the Central Committee of the Communist Party of China and the State Council on Deepening the Health Care System Reform (2009), available from www.china.org.cn/government/scio-press-conferences/2009-04/09/content_17575378.htm.

[57] Hao Yu, "Universal insurance coverage for 1.3 billion people: what accounts for China's success?", *Health Policy*, vol. 119, No. 9 (2015), p. 1148.

[58] International Labour Office, "Extending health coverage to all: People's Republic of China", March 2016. Available from http://socialprotection-humanrights.org/wp-content/uploads/2016/04/china_healthcare-coverage-to-all_2016.pdf.

[59] Meng and others, "Trends in access to health services and financial protection in China between 2003 and 2011: a cross-sectional study", *The Lancet* (March 2012), p. 812.

the dramatic improvement in national health indicators. Between 2000 and 2012, the infant mortality rate fell by 40 per cent and the maternal mortality rate fell by 49 per cent.[60]

97. These achievements are extremely impressive, but challenges remain, particularly in ensuring the equal enjoyment of the right to health by the poor. Affordability is a particular challenge. Health care remains expensive for many Chinese citizens, as the existing insurance regime does not offer comprehensive coverage of health-related expenses. Effective reimbursement rates for inpatient care, despite having increased significantly since 2003, still remain low, at 54.6 per cent for urban residents and 43.7 per cent for rural residents, notwithstanding the targeted rates of 75 per cent and 70 per cent respectively.[61] Similarly, while out-of-pocket expenditure has been reduced by half, from 60 per cent in 2001 to 32 per cent in 2014 and then to 29.27 per cent in 2015, it remains higher than the World Health Organization (WHO) recommended benchmark of 20 per cent,[62] and the reduction has not benefited rural and urban populations equally. Out-of-pocket payments still constitute 50 per cent of total per capita health expenses for the rural population.[63]

98. The proportion of households experiencing catastrophic health expenses has not declined, remaining at 12.9 per cent in 2011.[64] The figures for 2013, which were not published by the Government, were reportedly even higher. Poor households had catastrophic health expenses twice as often as wealthier households,[65] signalling the inadequate protection that the health insurance schemes offer to low-income households. The Medical Assistance Programme, which is designed to provide a safety net for poor people who cannot afford to pay health insurance premiums and out-of-pocket medical expenses, has not significantly alleviated their financial burden. According to data on national average inpatient fees, the Medical Assistance Programme contributed to the payment of between 9 and 11 per cent of the total fees only.[66] Combined with low reimbursement rates, this effectively puts the poor in a position where they have to pay a large portion of medical fees themselves. These statistics explain why an estimated 40 per cent of the poor in rural areas become impoverished due to ill health.

99. In deepening health-care reforms for the benefit of all, including the poor, institutional reform should be high on the agenda. The institutional architecture of the health sector is fragmented in China and the responsibility for designing, planning and financing policies, and for maintaining health insurance schemes and the Medical Assistance Programme, is dispersed over various State organs and ministries, such as the National Development and Reform Commission, the National Health and Family Planning Commission, the Ministry of Human Resources and Social Security, and the Ministry of Civil Affairs.[67] This complex structure inevitably gives rise to conflict between different policies and leads to coordination problems and counterproductive interdepartmental competition for resources.

[60] WHO, *World Health Statistics 2014*.

[61] Meng and others, "Trends in access to health services and financial protection", p. 809 (table 4).

[62] World Bank Group, World Health Organization, Ministry of Finance, National Health and Family Planning Commission, and Ministry of Human Resources and Social Security, "Deepening health reform in China: building high-quality and value-based service delivery" (2016), p. 10.

[63] Ibid., p. 11.

[64] Meng and others, "Trends in access to health services and financial protection", p. 812.

[65] Ibid.

[66] Lilin Liang and John C. Langenbrunner, "The long march to universal coverage: lessons from China", Universal Health Coverage Studies Series No. 9 (2014), World Bank, p. 9.

[67] Ibid., p. 10.

V. Assessment of the record of China on economic and social rights

A. Introduction

60. China ratified the International Covenant on Economic, Social and Cultural Rights in 2001, and is a party to various other international treaties recognizing economic and social rights.[68] In white papers on human rights and in its national human rights action plans, China has consistently emphasized its commitment to guaranteeing these rights. Indeed, in the Human Rights Action Plan for 2016-2020, the first objective for the implementation of the action plan is "comprehensively safeguarding citizens' economic, social and cultural rights".[69]

61. In order to understand what is required if these rights are to be treated as human rights, rather than as broad development goals, it is helpful to understand the three types of measures that Governments should take. These involve recognition of the rights in legislative or other form, the creation of institutions to promote their realization, and the provision of accountability mechanisms to ensure redress for violations (the recognition, institutionalization and accountability ("RIA") framework[70]).

B. Recognition of economic and social rights

62. The 1982 Constitution of the People's Republic of China was amended in 2004 to provide that "the State respects and protects human rights" (art. 33). Chapter 2 lists "the fundamental rights and duties of citizens", and contains various provisions dealing with the subject matter of the International Covenant on Economic, Social and Cultural Rights. For the most part, the formulation of the relevant constitutional rights is different from that in the Covenant, and some of the rights contained in the latter have no counterpart in the Constitution. The Constitution is silent on the domestic status of treaties, including human rights treaties, and their hierarchy in the domestic legal system.[71] The Government has interpreted this silence as meaning that these treaties can only be applied by courts after being transformed into domestic law through legislative procedures.[72]

63. None of the domestic implementing laws make specific reference to the relevant treaties. Studies have shown that economic and social rights are not translated into specific human rights terms in Chinese legislation.[73] In domestic law, reference is often made in general terms to the Constitution, but never explicitly to the International Covenant on Economic, Social and Cultural Rights, or to specific Covenant-based economic and social rights, or to specific economic and social rights provisions in the Constitution. The recognition of economic and social rights in the Chinese legislative framework is all but non-existent.

C. Institutionalization

64. Many countries around the world have created a national human rights institution. In fact, there is also a human rights institution in Hong Kong, China. These institutions

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[68] Convention on the Elimination of All Forms of Discrimination against Women (1980); International Convention on the Elimination of All Forms of Racial Discrimination (1981); Convention on the Rights of the Child (1992); Convention on the Rights of Persons with Disabilities (2008).

[69] National Human Rights Action Plan of China.

[70] For a detailed elaboration of this framework, see A/HRC/32/31.

[71] Hanqin Xue and Qian Jin, "International treaties in the Chinese domestic legal system", *Chinese Journal of International Law*, vol. 8, No. 2 (2009), p. 300.

[72] See E/C.12/CHN/2, p. 9.

[73] Sanzhuan Guo, "Implementation of human rights treaties by Chinese courts: problems and prospects", *Chinese Journal of International Law*, vol. 8, No. 1 (2009), pp. 167-171.

typically offer advisory opinions to the government, advise on the harmonization of domestic practices with international legal norms, cooperate with international monitoring mechanisms, publicize human rights initiatives and promote transparency.[74] China informed the Committee on Economic, Social and Cultural Rights that although it has not established a national human rights institution, numerous departments within the Government already perform comparable functions.[75] In its concluding observations, the Committee expressed its concern about the absence of such an institution and noted that government institutions cannot effectively carry out the same roles as a national human rights institution.[76]

65. In the absence of a national human rights institution, the responsibility to promote awareness and understanding of economic and social rights as human rights falls upon government ministries and other agencies. In China, it became clear to the Special Rapporteur from conversations with officials that these bodies considered much of what they do to be devoted to the goals reflected in economic and social rights but that they generally refrained from using rights-specific language and did not consider accountability mechanisms to be relevant or necessary.

D. Accountability

66. The principle of accountability provides the overarching rationale for the recognition of human rights obligations. It primarily requires that governments are accountable to their citizens and other rights holders. The right to a remedy is recognized in the Universal Declaration of Human Rights, and international human rights law has attached particular importance to developing an understanding of the right to adequate, effective, timely and appropriate remedies, including reparations.[77]

67. There are very many contexts in China in which the economic and social rights of those living in poverty, as well as others, might potentially be violated through government action or inaction. These include, in particular, cases relating to land expropriation, environmental degradation, workers' rights, access to education, and social security entitlements. The extent of the crackdown on corruption undertaken by President Xi illustrates the extent to which Party and government officials have engaged in corrupt conduct, which is very often prejudicial to the rights of individuals. This, in turn, highlights the need for effective accountability mechanisms.

68. When the importance of accountability is acknowledged, as has been the case in relation to violations of pollution laws, the Government tends to rely almost entirely on top-down processes. The recent announcement that some 2,000 public officials had been punished following inspections in eight provinces and regions demonstrates this approach. However, officials carrying out sporadic controls on other officials is no substitute for providing regularized avenues for citizens to complain and seek remedies for relevant abuses.

69. The problem is that it is extremely difficult to identify any effective mechanisms or avenues of this sort in China, despite the plethora of procedures that exist in theory.

70. The first port of call for an aggrieved individual is the relevant government agency. Since that agency will generally be responsible for the violation, and will have no independent officials monitoring its work, the only real resort in a case that challenges official authority is the so-called "letters and visits" (*xinfang*) or "petitioning" procedure — a constitutional right protected in article 41 of the Constitution. By most accounts, this is an opaque process, dealt with by offices that are systematically understaffed, and has

[74] See General Assembly resolution 48/134, on the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

[75] See E/C.12/CHN/Q/2/Add.1.

[76] See E/C.12/CHN/CO/2.

[77] See General Assembly resolution 60/147, which contains the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

significant structural shortcomings. Despite its central importance, no meaningful statistics are available as to the number and nature of petitions submitted.[78] While relatively recent rules oblige the offices to send a response of some sort to petitioners, various interlocutors suggested they would be surprised if even 1 per cent of the cases were resolved in a manner that the petitioner would consider satisfactory. It is not surprising that petition procedures are often reported as resulting in violence against or by the petitioners.

71. Another possibility is provided for under article 90 of the Legislation Law, according to which Chinese citizens may submit written suggestions to the Standing Committee of the National People's Congress requesting a review of whether "administrative regulations, local regulations, autonomous regulations or separate regulations contradict the Constitution or laws". This seems like a promising avenue on paper, but I was informed by the relevant official at the National People's Congress that out of perhaps 100 communications received (for a population exceeding 1.3 billion), he could recall only a couple of instances over the past few years in which action had formally been taken upon the receipt of a written suggestion. More than a decade after the well-known Sun Zhigang incident and a subsequent citizen request for constitutional review that led to a repeal of the 1982 Measures on Custody and Repatriation of Vagrants and Beggars,[79] not much progress appears to have been made with regard to the regularization of this accountability mechanism. It remains as untransparent and discretionary as before.

72. Yet another option for a citizen trying to hold the authorities to account for violations of economic or social rights is to hire a lawyer. In straightforward cases of official misconduct or flouting the law, a local lawyer might be able to obtain relief. But if the matter requires the public airing of policy considerations, the crackdown on human rights lawyers, including the widely reported "709" mass arrests,[80] and the prosecution of labour lawyers,[81] have made it very difficult for lawyers to be other than governmental facilitators. Besides the more straightforward forms of intimidation of lawyers, the Government of China has strengthened its "control mechanisms" for lawyers.[82] While legal aid programmes provided by the Government are growing rapidly and are increasingly available to citizens in need, it is rare to get legal aid for cases that challenge government policies.[83]

73. Recent reforms to the Administrative Litigation Law, and measures designed to enhance the independence of the judiciary from local political influences, offer some prospect that the courts might start to play a more robust and detached role in reviewing challenges to government conduct. According to the Supreme People's Court 2015 work report, released in March 2016, courts accepted 241,000 first instance administrative cases in 2015, which was an increase of 59 per cent over 2014.[84] But the continuing influence of the Party political-legal committees that guide the work of the courts,[85] and their track

[78] One news report suggested that more than 4 million petitions involving administrative disputes have been filed annually in China. Sun Gan, "Citizens suing officials: petition cases exceed 4 million annually", *Beijing Times*, 5 November 2014.

[79] Keith Hand, "Resolving constitutional disputes in contemporary China", *University of Pennsylvania East Asia Law Review*, vol. 7, No. 1 (2011), p. 113.

[80] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17050 and www.theguardian.com/world/2016/jul/09/crap-what-you-see-families-of-seized-lawyers-send-public-warning-to-china.

[81] On 15 February 2016, the International Trade Union Confederation filed a complaint (case No. 3184) against the Government of China with the Committee on Freedom of Association — an International Labour Organization Governing Body committee — concerning the arrest and detention of eight advisers and paralegals who have provided support services to workers and workers' organizations to defend workers' rights.

[82] Eva Pils, *China's Human Rights Lawyers: Advocacy and Resistance* (2015), pp. 154-169.

[83] Fu Hualing, "Away from grass roots? The costs of the Chinese rural legal service", *Diogenes*, vol. 6 (2015), pp. 116-132.

[84] See https://supremepeoplescourtmonitor.com/2016/03/15/takeaways-from-the-supreme-peoples-court-2015-work-report/. See also www.chinadaily.com.cn/china/2016-04/05/content_24275626.htm.

[85] Ling Li, "The Chinese Communist Party and People's Courts: judicial dependence in China", *American Journal of Comparative Law*, vol. 64, No. 1 (2016).

record to date in not entertaining cases based on claims that human rights have been violated, suggests little room for optimism. As one commentator has put it, in recent years, "the authorities have sought to close down rhetoric (constitutionalism), channels (court trials) and social forces (lawyers) that activists had used to mobilize greater changes".[86]

74. Given the reluctance of the courts in relation to human rights issues, the role to be played by NGOs is potentially even more important. But in 2017, the Law on the Management of Foreign Non-Governmental Organizations has regulated the operations of foreign-based groups in China, requiring their registration with the Ministry of Public Security and greatly restricting the financing and other types of assistance that they can provide in China. Registration may be revoked and criminal sanctions applied for damaging "national interests" or "society's interests" — two phrases which are problematically open-ended and discretionary. The result in practice will be that groups that work on issues such as disability rights, women's rights, health rights and workers' rights, and economic and social rights in general, will no longer be able to rely to the same degree on technical or financial assistance from abroad. Many such groups will close down, thus further restricting the space for any meaningful policy dialogue that does not follow the Party's guidance. In addition, the new Charity Law, which regulates domestic NGOs, is already in place, and additional implementing regulations are currently being considered. These, too, are moving in the direction of strongly limiting advocacy work around policy issues. The main concern of civil society actors is that the Charity Law will perpetuate and further solidify a two-tier system between what the Government considers, in essence, "good" (service-oriented) and "bad" (policy and advocacy-oriented) domestic NGOs.

75. Overall, there is a sense of a carefully designed law-and-order pincer movement. The result is to significantly reduce the options for seeking redress or letting off steam through any legal or administrative mechanisms. This may result in even more mass protests, which are generally met with repressive measures. Academics have written that China is in a state of "rigid stability",[87] which approaches every form of protest or dissent against violations of rights as a major problem, and have claimed that the Chinese approach is paradoxical,[88] given the many investments by China in improving the legal system as well as the often-repeated recognition of the importance of the rule of law. As Amartya Sen has pointed out in regard to the approach taken by China, there is "a serious fragility in any authoritarian system of governance, since there is little recourse or remedy when the government leaders alter their goals or suppress their failures".[89] The current Chinese approach, which denies individuals meaningful access to accountability mechanisms for violations of their economic and social rights, not only contradicts the country's international human rights treaty obligations, but is also an unsustainable approach to resolving the inevitable discontent that will ultimately undermine stability. The challenge for the Government, working together with civil society actors and individual citizens, is to develop meaningful avenues for complaints about rights violations that fit within the Chinese domestic context and to enable individuals to hold all levels of government to account when individual rights are violated. Rather than conflicting with the preservation of stability, the protection of rights is an important basis for stability.[90]

VI. Conclusions and recommendations

76. **The achievements that China has made in alleviating poverty have been extraordinary. Its leadership has made a strong and genuine commitment to building**

[86] Carl Minzner, "China at the tipping point? The turn against legal reform", *Journal of Democracy* (January 2013), p. 69.

[87] Yu Jianrong, "Rigid stability", *Contemporary Chinese Thought*, vol. 46, No. 1 (2014).

[88] Benjamin Liebman, "Legal reform: China's law-stability paradox", *Daedalus*, vol. 143, No. 2 (spring 2014), pp. 96-109.

[89] Amartya Sen, "Quality of life: India vs. China", *The New York Review of Books*, 12 May 2011.

[90] See https://www.thechinastory.org/2013/01/chinas-rigid-stability-an-analysis-of-a-predicament-by-yu-jianrong-%E4%BA%8E%E5%BB%BA%E5%B5%98/.

a "moderately prosperous society" free of extreme poverty, thus showing political will that is impressive and all too uncommon in today's world.

77. The future sustainability of this record will require a focus that looks beyond meeting income targets and that addresses a broader array of social protection needs. There is also a need to produce and publish more accurate data, which is an indispensable foundation for successful policymaking in the social and economic realms.

78. While China has done a huge amount to promote economic and social well-being, this has not yet been translated into an approach based on treating economic and social rights as human rights. Most of the relevant rights are not recognized in domestic legislation, domestic institutions do not promote them as such, and existing accountability mechanisms are largely ineffectual. The biggest challenge for the future lies in designing meaningful accountability, which will, in turn, channel dissent and enhance societal stability, as well as promoting economic and social rights.

79. More specific recommendations are contained in the body of the report and are not repeated here.